

**Tennessee Department of Environment and Conservation
Division of Underground Storage Tanks
Office of the Director**

Statutory and Regulatory Interpretive Memorandum

**DATE: January 30, 2002
TO: All UST Division Staff
FROM: Wayne Gregory**

SUBJECT: Original Certificates

QUESTION:

Does the posting of a copy of a petroleum underground storage tank certificate at an underground storage tank facility constitute compliance with the Tennessee Underground Storage Tank Act and/or the regulations promulgated thereunder?

SCOPE OF THIS DISCUSSION

For the purpose of this discussion, the term “copy” means any certificate reproduced from an original by a tank owner, tank operator or any other person, including staff of the Division of Underground Storage Tanks. The method of such document reproduction might include, but would not be limited to, the use of copy machines (color or black and white), photographic equipment, scanners and/or other computer hardware and/or computer software.

“Certificate” means an annual petroleum underground storage tank certificate. This certificate shall only be produced by members of the staff of the Enforcement and Compliance Section of the Tennessee Division of Underground Storage Tanks whose written job plan includes responsibility for generating certificates.

**APPLICABLE TENNESSEE PETROLEUM UNDERGROUND
STORAGE TANK STATUTE
AND REGULATIONS**

T.C.A. 68-215-106 (c)

- (1) The commissioner shall issue a certificate to the owner/operator of each petroleum underground storage tank who has submitted his petroleum underground storage tank notification forms. The certificate shall contain pertinent information relative to that petroleum underground storage tank. The certificate shall be issued annually by the commissioner. The certificate for each petroleum underground storage tank at a facility must be conspicuously posted at the facility.

- (2) It is unlawful for any person to place or cause to be placed petroleum substances in a petroleum underground storage tank without a certificate required pursuant to subdivision (c)(1).
- (3) The commissioner may revoke and remove the petroleum underground storage tank certificate from any petroleum underground storage tank owner or operator who violates any provision of this chapter, the rules and regulations promulgated pursuant to this chapter, or any order issued by the commissioner or board.

Rule 1200-1-15-.10

- (7) Issuance of Annual Petroleum Underground Storage Tank Facility Certificates.
 - (a) The Division shall issue petroleum underground storage tank facility certificates annually. The certificate will contain the facility identification number, address, number of underground storage tanks, and the size of said tanks. The color of the certificate will be changed annually in order to assist persons delivering petroleum in determining if the underground storage tank facility has a current certificate.

- (8) Unlawful Action.

It shall be unlawful to put petroleum into underground storage tanks at a facility without a current petroleum underground storage tank facility certificate. This is a violation for the person putting petroleum into the underground storage tank as well as for the person having product put into the underground storage tank.

- (9) Removal of Certificates.

The Division may remove the petroleum underground storage tank facility certificate from a facility if the owner/operator violates the provisions of T.C.A. 68-215-101 et seq. or any regulations promulgated subsequent to this Act. Such removal shall be authorized through issuance of a Commissioner's Order due to violations of the Act or regulations. The owner/operator may appeal the Commissioner's Order to the Board.

DISCUSSION & ANALYSIS

The first point for discussion is who may issue or publish a certificate. The statute makes it clear in T.C.A. 68-215-106(c)(1) that the legislature has authorized the commissioner to issue certificates to owner/operators of tanks. The legislature has not authorized tank owners and/or operators to issue certificates. The regulations authorize the Division to issue the certificates on behalf of the commissioner. A copy of a certificate reproduced by an owner/operator or other person is not a certificate which has been legally issued by either the commissioner of the Department of Environment and Conservation or by the Division.

The regulations further support the position that only the original certificate issued by the commissioner is a valid certificate for satisfying the statutory and regulatory requirements in last sentence of subparagraph (7) (a) of rule 1200-1-15-.10. The rule states that the certificates will have annual color coding. It further explains that this helps persons delivering product to know that a current certificate is present.

Further analysis yields yet another rationale for not accepting a copy as a valid certificate. The law and the regulations authorize revocation of certificates. The impact of certificate revocation is the inability to legally place product in the tanks. If copies were valid in lieu of the original certificate, then the commissioner would have to revoke some unknown number of copies at an unknown number of locations (the distributor's business office, the tank owner's business office, the "conspicuously posted" location at the facility, etc.). Such an action would fly in the face of the necessity for a detail-specific set of requirements in a commissioner's or director's order for the purpose of due process (the right to know the requirements and to be able to appeal those requirements if the respondent so desires). Furthermore, if a copy would suffice in the place of an original, the distributor could never be sure whether or not the tank owner/operator possessed a valid certificate which had not been revoked. This places the distributor at risk for violation of the law without a quick, simple, easy means of assuring compliance.

In addition to the regulatory evidence, past history sheds some light on this issue as well. Years ago the Division encountered situations, such as theft, fire, and loss of certificates causing owners not to have a valid certificate. Approximately 50 certificates are replaced for tank owners each year. Rather than send a copy generated on an office copy machine, the Division has generated duplicate certificates for tank owners for the nominal charge of \$10.00. This would not have been necessary for either the Division or the tank owner if a 10 ¢ copy machine copy (previously a 50 ¢ copy) would have been sufficient to satisfy the statutory and regulatory requirements.

A practical reason for requiring original certificates is the assurance that the information on the face of each certificate is as accurate as possible. Just as the Division worries that a copy of a lab results document might not be an accurate representation of the facts, so the Division is concerned that a copy of a certificate might not be an accurate representation of the status of tanks at the site and might not be an accurate representation as to whether or not annual tank fees for the current fee year have been remitted to the Division.

Since this discussion has arrived at the conclusion that a copy is not a legally issued certificate, the logical next step in the discussion and the obvious answer to the question posed at the beginning of this document is this: posting a copy does not satisfy the statutory requirement to "conspicuously post" a certificate.

CONCLUSION

The posting of a copy of a petroleum underground storage tank certificate at an underground storage tank facility does not constitute compliance with the Tennessee Underground Storage Tank Act and/or the regulations promulgated thereunder.